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Outcome of the eleventh session of the Working Group on the issue of human rights and transnational corporations and other business enterprises

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I. Summary

1. The Working Group on the issue of human rights and transnational corporations and other business enterprises held its eleventh session in Geneva, Switzerland from 4 to 8 May 2015. This session was the first attended by the new member of the Working Group, Mr. Dante Pesce, who took up his functions on 1 May 2015. The other Working Group members welcomed Mr. Pesce and noted that they looked forward to his participation in the work of the Working Group going forward.

2. During the session, the Working Group convened meetings and discussions on the following:

(a) The Working Group's priorities and projects for 2015;

(b) A forthcoming State survey focusing on State practice relating to the implementation of Guiding Principle 4 on the roles and responsibilities of States as economic actors, including with regard to business enterprises owned, operated, or managed by the State, business enterprises in which the State is a majority shareholder or exercises substantial control, and financial institutions such as sovereign wealth or pension funds, development banks, export credit agencies and official investment and insurance guarantee agencies. The survey will examine the integration of human rights considerations by such entities, and feed into a discussion on this subject at the 2015 annual Forum;

(c) Three open consultation meetings, respectively with States and intergovernmental organizations, business associations, and civil society organizations, to consult on the Working Group's plans and to seek input on specific projects;

(d) A one-day expert consultation on measuring and monitoring progress in the uptake and implementation of the Guiding Principles on Business and Human Rights;

(e) Plans to hold a regional Forum on Business and Human Rights in Asia in 2016; and planning in relation to the fourth annual Forum on Business and Human Rights to be held in Geneva, Switzerland 16 - 18 November 2015;

(f) Other Working Group projects, meetings and salient issues, including its proposed country visits; its communications to States and businesses, where appropriate, in relation to pressing human rights issues; the forthcoming first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights; the Working Group's cooperation with other Special Procedures mechanisms, the Working Group's upcoming report to the General Assembly; and the Working Group's cooperation with the International Labour Organization (ILO).

3. The present report summarizes some of the key items discussed.

II. Working Group priorities and projects for 2015

4. The Working Group reflected on that fact that an increasing number of States are recognising the value of developing a national action plan on business of human rights, and are either finalising their national action plans, or announcing their intentions to start the process of formulating a national action plan on the basis of multi-stakeholder dialogues. The Working Group emphasized its long-held view that the development of national action plans on business and human rights is an essential tool to help increase implementation of, and awareness of, the Guiding Principles on Business and Human Rights by States, civil society organizations, national human rights institutions, and business enterprises.

The Working Group decided to prioritize its participation and engagement in meetings and discussions related to the development process of national action plans, and to continue to use its convening power to facilitate a sharing of experiences. It also reiterated that it would continue to serve as a point of reference for States that seek assistance and guidance in developing national action plans on business and human rights, including by facilitating contacts and sharing of experiences amongst States. While encouraged by the positive emerging trend of an increasing number of States in different regions taking steps towards national action plans on business and human rights, the Working Group observed that so far the greatest progress with regard to uptake of the Guiding Principles has been the integration of key elements in global standards and initiatives relating to responsible business conduct. Among the most notable and with potential for spurring further progress, the Working Group reflected on the contributions of frameworks such as the OECD Guidelines for Multinational Enterprises (as well as emerging, related guidance within the OECD system), ISO 26000, GRI-G4, as well as sector-specific initiatives by industry bodies (e.g. ICMM and IPIECA) or involving the United Nations (e.g. the Global Compact and the UNEP Finance Initiative).

5. The Working Group discussed its proposed country visits in 2015 and maintained its position that it would prioritize a visit to a country in the Latin America and the Caribbean region during 2015, having previously undertaken visits to countries in Asia, North America, Africa and Eastern Europe. It noted that certain States from the Latin America and the Caribbean region had agreed, in principle, to a visit by the Working Group and that dates were in the process of being negotiated.

6. The Working Group reiterated its plan to continue sending communications to States, business enterprises and other relevant stakeholders. It also stressed the continued importance of sending communications to both home and host states where relevant, and its on-going commitment to raising awareness among other special procedures mandates of the need to communicate directly with business in communications involving allegations of corporate abuse or negative impacts. It noted that information about the communications procedure is available on the website of the Working Group.

7. The Working Group discussed its priorities, in addition to country visits, for the second term of its mandate. This included a discussion on the thematic focus of its reports to the General Assembly in 2015 and the Human Rights Council in 2016, and a possible visit to a business enterprise or other non-State entity. The Working Group also discussed the importance of the post-2015 sustainable development framework for advancing business and human rights issues, as also discussed in its 2015 report to the Human Rights Council (A/HRC/29/28). The Working Group noted in this regard the importance of monitoring business contributions and obstacles to the achievements of the SDGs. The Working Group decided that it would continue to engage in this process and make specific contributions as entry points are identified.

III. Forthcoming State survey

8. A key priority for the Working Group is to contribute to enhancing efforts to track progress in the field of business and human rights. It resolved that following on from previous efforts by the Working Group to map State practice and lessons learned on implementation of the Guiding Principles on Business and Human Rights, it will again shortly distribute a survey to all States. The focus of the survey will be on the roles and responsibilities of States as economic actors, including with regard to business enterprises owned, operated, or managed by the State, business enterprises in which the State is a majority shareholder or exercises substantial control, and financial institutions such as sovereign wealth or pension funds, development banks, export credit agencies and official

investment and insurance guarantee agencies. Specifically, the survey will relate to Guiding Principle 4 which addresses the need for States to protect against human rights abuses by business enterprises that are owned or controlled by the State. While not a specific focus in the survey, the Working Group also noted that Guiding Principle 5 (requiring States to exercise adequate oversight when contracting with or legislating for business to provide services that may impact upon human rights) and Guiding Principle 6 (ensuring respect for human rights when conducting commercial transactions, not least through public procurement) were highly pertinent in the context of the role of the State as an economic actor. It resolved that these principles may be the subject of future surveys by the Working Group.

9. In addition, the Working Group decided that it would also like to receive updates from States on their general approaches to business and human rights with a view to both signaling the importance of and understanding better current challenges and innovations relating to government policy coherence. In particular, it would like to receive information from States as to whether they are in the process of, or contemplating the development of, national action plans, given the close relationship between national action plans on business and human rights and other public policy efforts relating to promotion of responsible business practice. The Working Group considered that States in all regions will have relevant practice and lessons to share with regard to these aspects.

10. The results of the survey will inform a dedicated session at the 4th annual Forum on Business and Human Rights. This session will involve panels addressing both national action plans and the topic of human rights and State-owned enterprises and other business controlled by the State. It will be an opportunity for participating States to share their experiences with the Forum audience and engage in multi-stakeholder dialogue on this topic.

11. The results of the survey will also feed into the Working Group's tracking and analysis of trends in implementation of the Guiding Principles on Business and Human Rights. The Working Group emphasised that it welcomes contributions from all States and it appreciates the resources that States will expend in supporting the collective goal of achieving a better understanding of the current state of play, existing challenges and practices, by responding to the survey. It resolved that future survey efforts should examine practices, challenges and lessons learned with regard to the implementation of other specific principles, or clusters of principles, of the Guiding Principles.

IV. One-day expert consultation on measuring and monitoring progress in the implementation of the Guiding Principles on Business and Human Rights

12. During its tenth session the Working Group discussed its strategy and priorities and concluded that measuring progress in relation to the uptake of the Guiding Principles on Business and Human Rights would be an important element of its work during its second mandate term, and that this topic would be addressed in its next report to the General Assembly. In light of this, the Working Group convened a one-day expert consultation during its eleventh session titled "Measuring and monitoring progress in the implementation of the UN Guiding Principles on Business and Human Rights" which explored what kinds of benchmarks, indicators, metrics and statistics are relevant to monitor and evaluate progress towards the implementation of the Guiding Principles. The Working Group invited a group of 17 experts from different regions to join it for a structured consultation and exchange of views under the Chatham House Rule.

13. The consultation had a broad focus to include key initiatives aimed at measuring not only the general uptake of the Guiding Principles on Business and Human Rights but also the level of implementation of the Guiding Principles. The first session discussed a wide range of initiatives which set out to measure progress in the human rights and business field, by both States and businesses, with the aim of identifying their methodologies, their strengths and weaknesses, and potential gaps. The second session looked at initiatives beyond the human rights and business field that seek to measure States' progress or rank businesses, such as those related to measuring progress in the implementation of international human rights norms and principles, human development and sustainability indexes and reporting. The final sessions discussed challenges related to identifying meaningful indicators to assess progress in the implementation of the Guiding Principles with respect to all three pillars (State duty to protect, corporate responsibility to respect, and access to remedy for victims).

14. The fruitful discussions undertaken during the consultation will inform the Working Group's next report to the General Assembly which will be presented at the 70th session of the General Assembly in October 2015. The Working Group records its thanks to the experts for participating in the consultation and for generously and enthusiastically engaging with the topic.

V. Fourth annual Forum on Business and Human Rights and a proposed third Regional Forum for the Asia region

15. The Working Group, which is mandated by the Human Rights Council to guide the annual Forum on Business and Human Rights, discussed the plans underway for the fourth annual Forum, to be held in Geneva, Switzerland 16 - 18 November 2015. The Working Group noted that it aims to repeat the success of the third annual Forum on Business and Human Rights in involving stakeholders in the organization of parallel sessions. Following the 10th Session at which the Working Group decided to make direct stakeholder contributions a central feature of the fourth annual Forum on Business and Human Rights, the Working Group issued a call to States, business, civil society organizations, and other stakeholders to submit proposals for parallel sessions to be included in the programme of the fourth annual Forum on Business and Human Rights. The deadline for sending submissions was 1 May 2015 and the Working Group reported that it had received around 140 submissions and there was rich content with which to work.

16. The Working Group decided that the title of the Forum will be "Tracking progress and ensuring coherence on business and human rights". A focus of the Forum will be to track progress in implementation of the Guiding Principles on Business and Human Rights. The other focus will be the need to move towards greater policy coherence at all levels in order to ensure better protection and respect for human rights in the context of business – from global governance through national government policies and down to the level of individual business enterprises. Thematic issues will include:

- Corporate respect for human rights in practice, addressing challenges and emerging practices in corporate human rights due diligence and operational level grievances as well as multi-stakeholder engagement and collaboration to prevent and address negative impacts in concrete situations;
- Public policy and the State duty to protect human rights, addressing both general approaches – in particular in the form of national action plans – and specifically with regard to issues related to the role of the State as an economic actor, such as integration of human rights by State-owned enterprises;

- Access to remedy, both judicial and non-judicial;
- Challenges for vulnerable groups at particular risk;
- Coherence between frameworks for sustainable development, investment, trade and finance and the Guiding Principles, including in view of the fact that the Guiding Principles have informed updates in several major international policy initiatives, such as at the OECD, ISO 26000, GRI and the Global Compact.

17. The Working Group encourages all States to participate actively and promote the Forum, including among business constituencies. Information about the programme and other details concerning the event would be made available at the Forum website on an ongoing basis.[1]

18. The Working Group discussed its intention to hold a Regional Forum on Business and Human Rights for Asia and outlined the practical aspects that are being resolved to finalise the plans for a Regional Forum which is likely to take place in early 2016. In discussing a Regional Forum for Asia, the Working Group reflected on the achievements of the African Regional Forum on Business and Human Rights held in Addis Ababa, Ethiopia 16 - 18 September 2014, and the Regional Forum on Business and Human Rights for Latin America and the Caribbean held in Medellín, Colombia 28 - 30 August 2013.

VI. Meetings and briefings with stakeholders

19. The Working Group acknowledged that, in accordance with Human Rights Council resolution 26/9, the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights will hold its first meeting 6-10 July 2015. The Working Group met with the Permanent Representative of South Africa and a representative of the Permanent Mission of Ecuador, and reaffirmed its interest in attending the first meeting of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights. It also confirmed that it will stand ready to offer support to the open-ended intergovernmental working group as needed.

20. The Working Group had a telephone meeting with Olivier De Schutter, legal scholar, member of the UN Committee on Economic, Social and Cultural Rights, and former Special Rapporteur on the Right to Food, on the possible forms that a binding instrument on transnational corporations could take.

21. The Working Group met with staff of the Office of United Nations High Commissioner for Human Rights and received an update on the work of the Office in relation to the implementation of the Guiding Principles on Business and Human Rights, the OHCHR-led project on access to remedy, and plans for the forthcoming first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises, for which OHCHR provides the secretariat.

22. The Working Group met with Office representatives of the ILO and discussed the on-going working arrangements between the ILO and the Working Group to further entrench existing cooperation and information sharing, as reflected in the revised Methods of Work document, attached as an annex to the tenth session outcome document, which was

[1] http://www.ohchr.org/2015ForumBHR.

adopted during the tenth session and reflected the formalization of the existing cooperation with the ILO.[2]

23. The Working Group met with Linda Kromjong, the newly appointed Secretary-General of the International Organisation of Employers (IOE), to learn about IOE's involvement in efforts to promote the Guiding Principles among its constituencies.

24. The Working Group held a meeting open to all States and intergovernmental organizations. Representatives from 32 States and intergovernmental organizations attended. The meeting provided an opportunity for: Mr. Dante Pesce, the new member of the Working Group, to introduce himself and for the Working Group to present its plans and seek input on specific projects. In addition to discussing the survey of State practice and lessons learned on the implementation of the Guiding Principles (detailed above), the Working Group outlined its activities for 2015 and discussed with States its plans for the Annual Forum 16-18 November 2015; a regional forum on business and human rights in early 2016, country missions to the Latin America and the Caribbean region; potential visits to companies; its report to the Human Rights Council (A/HRC/19/28), due to be presented in June 2015, focusing on the need to further embed the Guiding Principles on Business and Human Rights throughout United Nations programmes and processes in order to improve policy coherence for inclusive and sustainable development;[3] and the topic of its forthcoming report to the General Assembly looking at uptake of the Guiding Principles on Business and Human Rights. The Working Group also highlighted its interest in contributing to the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

25. The Working Group held a productive meeting with the Working Group on discrimination against women in law and in practice to discuss different areas of cooperation including in relation to the gender aspects of the Working Group's guidance on national action plans on business and human rights, published on 1 December 2014, and the planned revision of that guidance later in 2015.

26. The Working Group held a consultation with civil society organizations and met with a wide range of stakeholders. The Working Group received written input prior to the consultation from civil society organizations. Representatives from 15 organizations attended. The meeting provided an opportunity for Mr. Dante Pesce to introduce himself and for the Working Group to discuss the theme of the 4th annual Forum on Business and Human Rights, set out the plans for the Regional Forum for Asia in 2016, talk about its aspirations for country visits and company visits over the coming years, introduce the survey that will shortly be sent to States concerning State practice and lessons learned on the implementation of the Guiding Principles, and draw attention to its report to the Human Rights Council. The Working Group also highlighted to civil society organisations its interest in contributing to the first session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

27. The consultation also enabled the Working Group to hear from a range of civil society organizations about the initiatives they are taking in the field of business and human rights and the areas they would like to see the Working Group focusing on during its mandate. One such example was the presentation by the Global Fund to Fight AIDS, Tuberculosis and Malaria of its work to incorporate human rights into every aspect of the grant life cycle, from consultation to implementation. The consultation with civil society

[2] Available at http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx.
[3] Available at http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx.

organizations also included discussion of the nature of the Working Group's work with national human rights institutions and other Special Procedures mandates.

28. The Working Group held a business stakeholder consultation with business enterprises and representatives of the business community. The Working Group facilitated the meeting with participants attending both in person, and via conference call. The Working Group received input in relation to the continued dissemination of the Guiding Principles on Business and Human Rights and plans for the 4th annual Forum on Business and Human Rights and the participation of business enterprises in this event.

VII. Chairperson and Vice-Chairperson

29. Michael Addo served as Chairperson of the Working Group, and Margaret Jungk served as Vice-Chairperson. As previously agreed, Michael Addo and Margaret Jungk will continue in these functions until 30 June 2015. From 1 July 2015, Margaret Jungk will serve as Chairperson of the Working Group until 31 December 2015. From 1 July 2015 Puvan Selvanathan will serve as Vice-Chairperson of the Working Group until 31 December 2015.